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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,567	06/25/2003	Craig Bahlmann	17559-038	3338
7590	10/21/2004		EXAMINER [REDACTED]	NGUYEN, CHAU N
Carol H. Peters Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center Boston, MA 02111			ART UNIT [REDACTED]	PAPER NUMBER 2831
DATE MAILED: 10/21/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/603,567	BAHLMANN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Chau N Nguyen	2831	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 02 September 2004.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-25 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-25 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 22 is objected to because of the following informalities: in claim 22, line 9, before "other" insert --each--. Appropriate correction is required.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-3, 5-7, 9-18 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4-6, 12, 13 and 29 of U.S. Patent No. 6,624,359 (Patent '359). Although the conflicting claims are not identical, they are not patentably distinct from each other

because the feature of each elongated fin-like member including an inner layer of dielectric material disposed between a first layer of conductive material and a second layer of conductive material such that the layers of conductive material face each other within each channel and the feature of the tape having X-shape cross-section and four channels, are all inherent from the structure as claimed in claims 4-6, 12, 13 and 29 of Patent '359. In addition, the elongated fin-like member can be arranged within a cable jacket since it comprises structure and material as claimed (re claims 2 and 6 of the instant application). Re claim 12, it would have been obvious to one skilled in the art to use EAA or EVA for heat fusible film of Patent '359 since these materials are well-known in the art for being used as heat fusible materials.

4. Claims 4, 8, 19 and 21-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 29 of U.S. Patent No. 6,624,359 (Patent '359) in view of Arnould (6,288,340).

Claims 1 and 29 of Patent '359 discloses the invention substantially as claimed except for a tubular jacket surrounding the tape and each elongated fin-like member being conformable such that at least a portion of each pair of adjacent elongated fin-like members can wrap around the at least one conductor.

Although not specifically disclosed by Patent '359, it would have been obvious to one skilled in the art to surround the tape of Patent '359 with a tubular jacket to protect the tape or the cable core since using a tubular jacket to protect a cable core is well-known in the art.

Arnould discloses a tape having elongated fin-like members (Fig. 2), wherein each elongated fin-like member is conformable such that at least a portion of each pair of adjacent elongated fin-like members can wrap around the at least one conductor, and the width of each elongated fin-like member is greater than an internal radius of the cable jacket. It would have been obvious to one skilled in the art to apply the teaching of Arnould in the tape of Patent '359 to prevent the at least one conductor from moving out of the channel.

#### *Response to Arguments*

5. Applicant's arguments with respect to claims 1 and 22 have been considered but are moot in view of the new ground(s) of rejection.

***Communication***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chau N Nguyen whose telephone number is 571-272-1980. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on 571-272-2800 ext 31. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Chau N Nguyen  
Primary Examiner  
Art Unit 2831